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SCHEDULES

SCHEDULE 33

Section 109

VENTURE CAPITAL TRUSTS

PART 1

VENTURE CAPITAL TRUSTS: WINDING UP

Meaning of “VCT-in-liquidation”

- 1 (1) In this Part of this Schedule “VCT-in-liquidation” means a company—
- (a) that is being wound up (whether or not under the law of a part of the United Kingdom and whether under the law of one, or more than one, territory),
 - (b) that was a venture capital trust immediately before the commencement of its winding-up, and
 - (c) whose winding up is for *bona fide* commercial reasons and is not part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.
- (2) Regulations may, for purposes of this Part of this Schedule, make provision as to when a company’s winding up is to be treated as commencing or ending in a case where it is wound up otherwise than under the law of a part of the United Kingdom or otherwise than under the law of a single territory.

Power to treat VCT-in-liquidation as VCT

- 2 (1) Regulations may make provision for tax enactments specified by the regulations to have effect as if—
- (a) a VCT-in-liquidation that is not a venture capital trust were, or were during any prescribed period of its winding-up, a venture capital trust;
 - (b) VCT approval withdrawn from a company—
 - (i) at any time during the period when it is a VCT-in-liquidation, or
 - (ii) at any time during a prescribed part of that period,were withdrawn at a prescribed time (and not at the time at which it is actually withdrawn).
- (2) In this paragraph “prescribed” means specified by, or determined under, regulations.

Power to treat conditions for VCT approval as fulfilled with respect to VCT-in-liquidation

- 3 (1) Regulations may make provision for conditions specified in section 842AA(2) of the Taxes Act 1988 (conditions for approval as a VCT) to be treated for purposes of section 842AA(2) and (3) of that Act as fulfilled, or as conditions that will be fulfilled, with respect to a VCT-in-liquidation.

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- (2) Provision under sub-paragraph (1) may be made so as to apply in relation to a VCT-in-liquidation—
 - (a) throughout its winding-up, or
 - (b) during prescribed periods of its winding-up.
- (3) Regulations may, for purposes of tax enactments specified by the regulations, make provision for VCT approval to be treated as having been withdrawn, with effect as from a time specified by or determined under the regulations, from a VCT-in-liquidation from whom the Board would have power to withdraw such approval but for provision made under sub-paragraph (1).

Power to make provision about distributions by VCT-in-liquidation

- 4 (1) Regulations may make provision for tax enactments specified by the regulations—
 - (a) to apply in relation to distributions from a VCT-in-liquidation (including, in particular, distributions in the course of dissolving it or winding it up);
 - (b) not to apply in relation to such distributions;
 - (c) to apply in relation to such distributions with modifications specified by the regulations.
- (2) Provision under sub-paragraph (1) may be made so as to apply in relation to distributions from a VCT-in-liquidation made—
 - (a) at any time during its winding-up, or
 - (b) during periods of its winding-up specified by, or determined under, regulations.

Power to facilitate disposals to VCT by VCT-in-liquidation

- 5 (1) Regulations may make provision authorised by sub-paragraph (2) for cases where shares in or securities of a company are acquired by a venture capital trust (“the trust company”) from a VCT-in-liquidation.
- (2) The provision that may be made under sub-paragraph (1) for such a case is—
 - (a) provision for conditions specified in section 842AA(2) of the Taxes Act 1988 (conditions for approval as a VCT) to be treated for purposes of section 842AA(2) and (3) of that Act as fulfilled, or as conditions that will be fulfilled, with respect to the trust company in relation to periods ending after the acquisition;
 - (b) provision for the shares or securities acquired to be treated, at times after the acquisition when they are held by the trust company, as meeting requirements of Schedule 28B to the Taxes Act 1988 (provisions for determining whether shares or securities held by a venture capital trust form part of its qualifying holdings);
 - (c) provision for shares in the trust company issued in connection with the acquisition of the shares or securities from the VCT-in-liquidation and either—
 - (i) issued to a person who is a member of the VCT-in-liquidation, or
 - (ii) issued to the VCT-in-liquidation and distributed by it in the course of its winding-up or dissolution to a person who is one of its members,

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to be treated, for purposes of Schedule 5C to the Taxation of Chargeable Gains Act 1992 (c. 12), as representing shares in the VCT-in-liquidation held by that person.

- (3) Provision under sub-paragraph (1) may be made so as to apply in relation to shares or securities acquired from a VCT-in-liquidation—
- (a) at any time during its winding-up, or
 - (b) during periods of its winding-up specified by, or determined under, regulations.
- (4) In this paragraph “securities” means any securities and includes any liability that is a security in relation to a company by reason of section 842AA(12)(a) of the Taxes Act 1988.

Provision in respect of periods before and after winding-up

- 6 (1) Any power under paragraphs 2 to 5 to make provision in relation to a VCT-in-liquidation includes power to make corresponding or similar provision in relation to—
- (a) a company for whose winding up an application has been made to a court and which is not a VCT-in-liquidation but would be if, at the time that application was made, the court had ordered the company’s winding-up to commence at that time;
 - (b) a company that has been a VCT-in-liquidation but is no longer a VCT-in-liquidation because it has been wound up.
- (2) For the purposes of making provision in reliance on sub-paragraph (1), references in paragraphs 2 to 5 (however expressed) to a VCT-in-liquidation’s winding-up, or to the commencement or ending of its winding-up, may be taken to be references to, or to the commencement or ending of, the extension period for a company to which sub-paragraph (1) applies.
- (3) In this paragraph—
- “the extension period”—
- (a) in relation to a company to which sub-paragraph (1)(a) applies, means the period beginning with the making of the application and ending with the earlier of its final determination and the company becoming a company that is being wound up, and
 - (b) in relation to company to which sub-paragraph (1)(b) applies, means the period between the end of the company’s winding-up and the company’s dissolution;
- “prescribed” means specified by, or determined under, regulations.

Part 1: supplementary provisions and interpretation

- 7 (1) Provision made by regulations under paragraphs 2 to 6 applies in cases, and subject to conditions, specified by regulations.
- (2) Such provision may (but need not) be made so as to have effect in a particular case only for such period as may be specified by, or determined under, regulations.
- (3) Such provision may be made in relation to any—
- (a) VCT-in-liquidation, or

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- (b) company such as is mentioned in paragraph 6(1), whose winding-up commences on or after 17th April 2002.
- (4) In this Part of this Schedule “VCT approval” means approval for the purposes of section 842AA of the Taxes Act 1988 (approval as a VCT).
- (5) References in this Part of this Schedule to things done by a VCT-in-liquidation include things done by a liquidator of a VCT-in-liquidation.

Modifications etc. (not altering text)

- C1** Sch. 33 para. 7(5) applied (17.9.2004) by [The Venture Capital Trust \(Winding up and Mergers\) \(Tax\) Regulations 2004 \(S.I. 2004/2199\)](#), regs. 1(1), 2(4)

PART 2

VENTURE CAPITAL TRUSTS: MERGERS

Power to facilitate mergers of VCTs

- 8 (1) The Treasury may by regulations make provision authorised by paragraph 9 for cases where—
- (a) there is a merger of two or more companies each of which is a venture capital trust immediately before the merger begins to be effected, and
 - (b) the merger is *for bona fide* commercial reasons and is not part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.
- (2) Provision made by regulations under sub-paragraph (1) applies—
- (a) in cases, and
 - (b) subject to conditions (including conditions requiring approvals to be obtained),
- specified by the regulations.
- (3) Provision made by regulations under sub-paragraph (1) may apply in relation to any merger where the transactions for effecting the merger take place on or after 17th April 2002.

Provision that may be made by regulations under paragraph 8(1)

- 9 (1) The provision that may be made under paragraph 8(1) for a case where there is a merger of two or more companies (“the merging companies”) is—
- (a) provision for the successor company, or any of the merging companies, to be treated (whether at times before, during or after the merger) as a venture capital trust for purposes of tax enactments specified by regulations;
 - (b) provision for paragraph 3 of Schedule 15B to the Taxes Act 1988 (loss of relief on disposal of VCT shares within three years of their issue) not to apply in the case of disposals of shares in a merging company made in the course of effecting the merger;

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- (c) provision for such disposals not to be chargeable events for the purposes of Schedule 5C to the Taxation of Chargeable Gains Act 1992 (c. 12) (VCTs: deferred charge on re-investment);
- (d) provision for conditions specified in section 842AA(2) of the Taxes Act 1988 (conditions for approval as a VCT) to be treated (whether at times before, during or after the merger) for purposes of section 842AA(2) and (3) of that Act as fulfilled, or as conditions that will be fulfilled, with respect to the successor company or any of the merging companies;
- (e) provision for shares in or securities of a company that are acquired (whether at times before, during or after the merger) by the successor company from a merging company to be treated, at times after the acquisition when they are held by the successor company, as meeting requirements of Schedule 28B to the Taxes Act 1988 (provisions for determining whether shares or securities held by a venture capital trust form part of its qualifying holdings);
- (f) provision for tax enactments specified by regulations to apply, with or without adaptations, in relation to the merger or transactions taking place (whether before, during or after the merger) in connection with the merger;
- (g) provision authorising disclosure for tax purposes connected with the merger—
 - (i) by the Board or officers of the Board,
 - (ii) to any of the merging companies or the successor company,
 - (iii) of any information provided to the Board, or any officer of the Board, by or on behalf of any of the merging companies or the successor company.

(2) In this paragraph “securities” has the same meaning as in section 842AA of the Taxes Act 1988.

Meaning of “merge”r and “successor compan”y

- 10 (1) For the purposes of this Part of this Schedule there is a merger of two or more companies (“the merging companies”) if—
- (a) shares in one of the merging companies (“company A”) are issued to members of the other merging company or companies, and
 - (b) the shares issued to members of the other merging company or, in the case of each of the other merging companies, the shares issued to members of that other company, are issued—
 - (i) in exchange for their shares in that other company, or
 - (ii) by way of consideration for a transfer to company A of the whole or part of the business of that other company.
- (2) For the purposes of this Part of this Schedule there is also a merger of two or more companies (“the merging companies”) if—
- (a) shares in a company (“company B”) that is not one of the merging companies are issued to members of the merging companies, and
 - (b) in the case of each of the merging companies, the shares issued to members of that company are issued—
 - (i) in exchange for their shares in that company, or
 - (ii) by way of consideration for a transfer to company B of the whole or part of the business of that company.

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- (3) In this Part of this Schedule “the successor company”—
- (a) in relation to a merger such as is described in sub-paragraph (1), means the company that fulfils the role of company A, and
 - (b) in relation to a merger such as is described in sub-paragraph (2), means the company that fulfils the role of company B.

PART 3

TIME ALLOWED FOR VCT TO INVEST MONEY RAISED BY FURTHER SHARE ISSUE

Power to disapply, or limit operation of, section 842AA(5B) of the Taxes Act 1988

- 11 (1) Regulations may make provision for section 842AA(5B) of the Taxes Act 1988 (use of money raised by VCT’s further issue of shares disregarded during grace period)—
- (a) not to apply, or to be treated as not having applied, in specified cases;
 - (b) to apply, or to be treated as having applied, in specified cases—
 - (i) only to a specified extent;
 - (ii) only if specified conditions (including conditions requiring approvals to be obtained) are satisfied.
- (2) Provision made by regulations under sub-paragraph (1) may (but need not) be made so that, in any particular case, section 842AA(5B) of the Taxes Act 1988—
- (a) does not apply, or is treated as not having applied, at prescribed times or with effect as from a prescribed time, or
 - (b) applies, or is treated as having applied, in accordance with provision made under sub-paragraph (1)(b) at prescribed times or with effect as from a prescribed time.
- (3) Regulations under sub-paragraph (1) may make provision in relation to shares issued on or after 17th April 2002.
- (4) In sub-paragraph (1) “specified” means specified by regulations and in sub-paragraph (2) “prescribed” means specified by, or determined under, regulations.

Withdrawal of VCT approval in cases for which provision made under paragraph 11

- 12 (1) Regulations may make provision for withdrawal of approval of a company for the purposes of section 842AA of the Taxes Act 1988 (venture capital trusts) to be treated—
- (a) in a case where the withdrawal is by reference to a condition for approval that would have been, or would be, fulfilled but for provision made under paragraph 11, and
 - (b) for purposes of enactments specified by regulations,
- as having taken effect as from a time specified in the notice of the withdrawal that is earlier than the time when the notice is given to the company.
- (2) Provision made under sub-paragraph (1) has effect subject to the provisions of section 842AA(9) of the Taxes Act 1988 (retrospective effect of notices of withdrawal of VCT approval) as to the earliest time that may be specified by such a notice.

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Consequential amendment in section 842AA(5A) of the Taxes Act 1988

- 13 In section 842AA(5A) of the Taxes Act 1988 (subsection (5B) applies where VCT makes further issue of shares), after “Subsection (5B) below applies” insert “, subject to any regulations under paragraph 11 of Schedule 33 to the Finance Act 2002, ”.

PART 4

SUPPLEMENTARY

Extension of existing powers to give effect to VCT reliefs

- 14 (1) Section 73 of the Finance Act 1995 (c. 4) (power to make regulations giving effect to VCT reliefs) shall have effect as if the reliefs mentioned in subsection (1) of that section included any relief arising by reason of regulations under Part 1 or 2 of this Schedule.
- (2) The powers conferred by those Parts of this Schedule are additional to those that (whether or not by reason of sub-paragraph (1)) are conferred by that section.

Penalties for non-compliance with regulations under this Schedule

- 15 In each column of the Table in section 98 of the Taxes Management Act 1970 (c. 9) (penalties for failure to furnish information etc), after the final entry insert “Regulations under Schedule 33 to the Finance Act 2002.”.

Regulations under this Schedule: inclusion of supplementary etc provisions

- 16 (1) Regulations under this Schedule may—
- (a) contain such administrative provisions (including provision for advance clearances and provision for the withdrawal of clearances) as appear to the Treasury to be necessary or expedient;
 - (b) authorise the Board to give notice to any person requiring him to provide such information, specified in the notice, as they may reasonably require in order to determine whether any conditions imposed by regulations under this Schedule are met;
 - (c) make different provision for different cases;
 - (d) include such supplementary, incidental and transitional provisions as appear to the Treasury to be appropriate;
 - (e) include provision having retrospective effect.
- (2) Without prejudice to any specific provisions in this Schedule, a power conferred by any provision of this Schedule to make regulations includes power to provide for the Board, or an officer of the Board, to exercise a discretion in dealing with any matter.

Interpretation of Schedule

- 17 In this Schedule—
- “company” includes any body corporate or unincorporated association but does not include a partnership, and shall be construed in accordance with section 99 of the Taxation of Chargeable Gains Act 1992 (c. 12) (application of Act to unit trust schemes);

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“regulations” means regulations made by the Treasury;

“shares” includes stock;

- (a) the Tax Acts,
- (b) the Taxation of Chargeable Gains Act 1992 or any other enactment relating to capital gains tax, or
- (c) the Taxes Management Act 1970 (c. 9);

“venture capital trust” has the meaning given by section 842AA of the Taxes Act 1988.

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